

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: WHOLESALE GROCERY
PRODUCTS ANTITRUST LITIGATION

Civil Action No. 09-md-02090 ADM/AJB
MDL No. 2090

THIS DOCUMENT RELATES TO:

ALL ACTIONS

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs hereby respectfully move for certification of the following classes:

The "Midwest Class": All entities located in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio and Wisconsin (the "Midwest") that purchased full-line wholesale grocery products and related services directly from one or both Defendants in the Relevant Geographic Market during the time period from December 31, 2004 – September 13, 2008 (the "Class Period"). The Relevant Geographic Market for the Midwest Class is comprised of the Midwest and Cass County (which includes the city of Fargo), North Dakota (*see* Attachment 2 to the Expert Report of Dr. Jeffrey Leitzinger (filed concurrently herewith)). "Related services" refers to those wholesale grocery services sold as part of, or in connection with, the purchase of wholesale grocery products from Defendants.

The “New England Class”: All entities located in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont (“New England”) that purchased full-line wholesale grocery products and related services directly from one or both Defendants in the Relevant Geographic Market during the Class Period. The Relevant Geographic Market for the New England Class is comprised of New England, adjoining counties in New York state (Clinton, Essex, Warren, Washington, Rensselaer, Columbia, Dutchess, Putnam, Westchester, Rockland, Orange, Ulster, Greene, Albany, Schenectady, Saratoga, Fulton, Montgomery, Bronx, New York, Richmond, Kings, Queens, Nassau and Suffolk) and five counties in northern New Jersey (Bergen, Essex, Hudson, Middlesex and Union) (*see* Attachment 3 to the Expert Report of Dr. Jeffrey Leitzinger (filed concurrently herewith)).

Excluded from the Midwest and New England Classes are:

- (a) the Court and its officers, employees and relatives, Defendants and their parents, subsidiaries, affiliates, shareholders, employees and co-conspirators, and government entities;
- (b) any customer of either Defendant who, prior to the Defendants’ September 6, 2003 Asset Exchange Agreement, entered into a contract with either Defendant that established the prices (including upcharges) the customer would pay for wholesale grocery products and related services throughout the entire Class Period and who did not amend or renegotiate the prices set in such contract during the Class Period; and
- (c) any customer having an arbitration agreement with either Defendant that is applicable to the claims in this case.

Additionally, excluded from the Midwest Class are Tops Friendly Markets, LLC and The Great Atlantic & Pacific Tea Company, Inc. (also known as A&P).

Plaintiffs request that the Court appoint D&G, Inc. d/b/a Gary's Foods ("Gary's Foods") the representative of the Midwest Class and DeLuca's Market Corporation ("DeLuca's") as the representative of the New England Class. Gary's Foods is an Iowa corporation that operates a retail grocery store in Mount Vernon, Iowa and purchased wholesale grocery products and services directly from SuperValu in the Relevant Geographic Market for the Midwest Class during the Class Period. Gary's Foods does not have an arbitration agreement with either Defendant. DeLuca's is a Massachusetts corporation that operates retail grocery stores in Boston, Massachusetts and purchased wholesale grocery products and services directly from C&S in the Relevant Geographic Market for the New England Class during the Class Period. DeLuca's does not have an arbitration agreement with either Defendant.

Plaintiffs also respectfully request the Court to appoint the law firms of Boies, Schiller & Flexner LLP, Kotchen & Low LLP and Meredith Cohen Greenfogel & Skirnick as Co-Lead Counsel for each of the Classes and to appoint Lockridge Grindal Nauen, P.L.L.P. Liaison Counsel for each of the Classes.

As fully set forth in Plaintiffs' Memorandum of Law filed in support of this motion, the Classes satisfy all the requirements of Rules 23(a) and 23(b)(3).

Dated: October 31, 2011

Respectfully submitted,

s/ Elizabeth R. Odette

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